

E. ILENE RHODMAN
Claimant

BOEING MILITARY AIRPLANES

**AETNA CASUALTY & SURETY
KEMPER INSURANCE CO.**
Insurance Carriers

WORKERS COMPENSATION FUND

Claimant seeks temporary total disability and medical benefits for injury to her knees. She had previously sought benefits for injury to her knees in Docket Number 168,275 based upon an Award for benefits for a fifteen percent (15%) permanent partial general disability. Claimant now seeks to review and modify that Award and as a part of that effort seeks additional temporary total disability and medical benefits. Claimant, in the alternative, has filed a new claim, Docket Number 205,157, alleging a new injury to her knees and, as a part of the new claim, also seeks temporary total disability and medical benefits. The Administrative Law Judge awarded both temporary total disability and medical benefits and assessed seventy-five percent (75%) of the costs in Docket Number 168,275 and twenty-five percent (25%) payment to be paid under Docket Number 205,157. The record indicates respondent changed insurance carriers with Aetna Casualty & Surety being responsible for benefits on the date of accident alleged in Docket Number 168,275 and Kemper Insurance Co., is responsible for benefits for Docket Number 205,157. The Administrative Law Judge also awarded the benefits paid under Docket Number 168,275

to be paid by the Kansas Workers Compensation Fund. In this context, Aetna Casualty & Surety raises the following issues:

- (1) Whether claimant's alleged injury, disability and treatment is compensable under Docket Number 168,275.
- (2) Whether the court has jurisdiction to order compensation in both docket numbers for a single injury.
- (3) Whether the Administrative Law Judge exceeded her jurisdiction in allowing temporary total disability benefits at the rate of three hundred nineteen dollars (\$319.00) and assessing a portion of this to the carrier, when the maximum statutory rate for Docket Number 168,275 was two hundred eighty-nine dollars (\$289.00) per week.
- (4) Whether the court can award benefits at the aforementioned rate in a review and modification.

The Kansas Workers Compensation Fund raises the following issues:

- (1) Whether claimant's current need for treatment is the natural and probable result of an earlier compensable injury; or whether it is a new injury resulting from an aggravation, acceleration or exacerbation of her earlier injuries;
- (2) Whether Judge Krysl's Order exceeds her authority when she apportions liability for current medical benefits between a previous injury and the alleged current compensable injury; and
- (3) Whether Judge Krysl exceeded her authority when she ordered Aetna to pay seventy-five percent (75%) of the temporary total disability benefits awarded at the current statutory maximum rate of three hundred nineteen dollars (\$319.00) per week, even though the maximum statutory rate at the time of the injury in Docket Number 168,275 was two hundred eighty-nine dollars (\$289.00) per week.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The issues raised on appeal are subject to review pursuant to the standard of review for appeals from the preliminary hearing orders. K.S.A. 44-534a. Under Docket Number 168,275 the hearing at issue here was a preliminary hearing in a context of an application for review and modification. In Docket Number 205,157, the hearing was a preliminary hearing on a new claim. In both cases, the benefits sought were medical and temporary total disability benefits, benefits which can be awarded from a preliminary hearing.

(2) The issues raised relate, in part, to whether claimant suffered a new accidental injury arising out of and in the course of her employment. In this context, the issues are subject to review on appeal from a preliminary order. K.S.A. 44-534a.

After reviewing the record, the Appeals Board finds that the evidence establishes, more probably than not, the need for temporary total disability and medical benefits results from a condition which is the natural and probable consequence of the original injury compensated under Docket Number 168,275 and not a new accidental injury as alleged in Docket Number 205,157. Claimant testifies her knees just kept hurting and it was just

a continuation of what was there. Dr. Jansson's report is inconclusive and not convincing support of either finding of a new accidental injury or finding that the condition is a natural and probable consequence of the original injury. The combination of claimant's testimony and her description of her work activities convinces the Appeals Board, for the purpose of these proceedings, the condition is a natural and probable consequence of the original injury and, therefore, compensable under Docket Number 168,275.

(3) Because the claim is compensable under Docket Number 168,275, the Administrative Law Judge has exceeded her jurisdiction by ordering benefits at a rate higher than the applicable statutory rate. Temporary total disability benefits should be paid at the rate of two hundred eighty-nine dollars (\$289.00) per week.

(4) The Order entered by the Administrative Law Judge requires the Kansas Workers Compensation Fund to pay all of the benefits awarded under Docket Number 168,275. However, the record reflects that a stipulation was entered between respondent and the Kansas Workers Compensation Fund pursuant to which the Workers Compensation Fund is responsible for eighty percent (80%) and the respondent twenty percent (20%) of the benefits awarded. The benefits should, therefore, be paid under Docket Number 168,275 by the Kansas Workers Compensation Fund and Aetna Casualty & Surety in accordance with the stipulation between those two parties.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Shannon S. Krysl dated November 2, 1995 is hereby, modified. Temporary total benefits beginning October 25, 1995 and continuing until claimant is released to substantial and gainful employment should be paid at the rate of \$289.00 per week. Benefits should be paid under Docket Number 168,275 by the then insurance carrier, Aetna Casualty & Surety and the Kansas Workers Compensation Fund in the proportions established by the stipulation between those two parties.

The Order stating Dr. Jansson is the authorized treating physician for all treatment, tests and referrals, except referrals to rehabilitation hospitals, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, Kansas
Vaughn Burkholder, Wichita, Kansas
David M. Druten, Lenexa, Kansas
Orvel Mason, Arkansas City, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director